

the general partners and any person related to the general partners (within the meaning of section 267(b) or section 707(b)(1)) own, in the aggregate, more than 10 percent of the outstanding interests in partnership capital or profits at any one time during the taxable year of the partnership, the total interests in partnership capital or profits are determined without reference to the interests owned by such persons.

(B) *Derivative interests.* Any partnership interests described in paragraph (a)(2)(ii) of this section are taken into account for purposes of determining the total interest in partnership capital or profits only as and to the extent that the transfer of the interest is taken into account under paragraph (a)(4) of this section.

(2) *Monthly determination.* For purposes of this section, except in the case of block transfers (as defined in paragraph (d)(2) of this section), the percentage interests in partnership capital or profits represented by partnership interests that are transferred during a taxable year of the partnership is equal to the sum of the percentage interests transferred for each calendar month during the taxable year of the partnership in which a transfer of a partnership interest occurs (other than a private transfer as described in paragraph (d) of this section). The percentage interests in capital or profits of interests transferred during a calendar month is determined by reference to the partnership interests outstanding during that month.

(3) *Monthly conventions.* For purposes of paragraph (j)(2) of this section, a partnership may use any reasonable convention in determining the interests outstanding for a month, provided the convention is consistently used by the partnership from month to month during a taxable year and from year to year. Reasonable conventions include, but are not limited to, a determination by reference to the interests outstanding at the beginning of the month, on the 15th day of the month, or at the end of the month.

(4) *Block transfers.* For purposes of paragraph (d)(2) of this section (defining block transfers), the partnership must determine the percentage interests in capital or profits for each transfer of an interest during the 30 calendar day period by reference to the partnership interests outstanding immediately prior to such transfer.

(5) *Example.* The following example illustrates the rules of this paragraph (j).

*Example. Conventions.* (i) ABC limited partnership, a calendar year partnership formed in 1995, has 1,000 units of limited partnership interests outstanding on January

1, 1996, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) The following transfers take place during 1996—

(A) On January 15, 10 units of limited partnership interests are sold in a transaction that is not a private transfer;

(B) On July 10, 1,000 additional units of limited partnership interests are issued by the partnership (the general partner's percentage interest is unchanged); and

(C) On July 20, 15 units of limited partnership interests are sold in a transaction that is not a private transfer.

(iii) For purposes of determining the sum of the percentage interests in partnership capital or profits transferred, ABC chooses to use the end of the month convention. The percentage interests in partnership capital and profits transferred during January is .95 percent, determined by dividing the number of transferred units (10) by the total number of limited partnership units (1,000) and multiplying the result by the percentage of total interests represented by limited partnership units  $([10/1,000] \times .95)$ . The percentage interests in partnership capital and profits transferred during July is .7125 percent  $([15/2,000] \times .95)$ . ABC is not required to make determinations for the other months during the year because no transfers of partnership interests occurred during such months. ABC may qualify for the 2 percent rule for its 1996 taxable year because less than 2 percent  $(.95 \text{ percent} + .7125 \text{ percent} = 1.6625 \text{ percent})$  of its total interests in partnership capital and profits was transferred during that year.

(iv) If ABC had chosen to use the beginning of the month convention, the interests in capital or profits sold during July would have been 1.425 percent  $([15/1,000] \times .95)$  and ABC would not have satisfied the 2 percent rule for its 1996 taxable year because 2.375 percent  $(.95 + 1.425)$  of ABC's interests in partnership capital and profits was transferred during that year.

(k) *Effective date.* This section applies for taxable years of a partnership beginning on or after the date final regulations are published in the **Federal Register**.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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## 26 CFR Part 1

[FI-21-95]

RIN 1545-AT46

### Definition of Personal Property for Purposes of the Straddle Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the definition of personal property for purposes of the straddle rules. This action is necessary to reflect changes in the law made by the Tax Reform Act of 1984. The regulations provide guidance to persons who enter into straddle transactions.

**DATES:** Written comments must be received by July 31, 1995. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for August 30, 1995, must be submitted by August 9, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (FI-21-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI-21-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. A public hearing has been scheduled for Wednesday, August 30, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Robert B. Williams, (202) 622-3960; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Background

Section 1092(d) of the Internal Revenue Code provides definitions and special rules relating to straddles. Under section 1092(d)(3)(B)(i)(II), an ownership interest in stock, which generally is not treated as personal property subject to the straddle rules, may be personal property if it is part of a straddle at least one of the offsetting positions of which is, under regulations, a position with respect to substantially similar or related property (other than stock). On March 20, 1995, the IRS published final regulations (§ 1.1092(d)-2) under section 1092(d)(3)(B). Those regulations generally apply the rules of § 1.246-5 to determine whether an offsetting position is a position with respect to substantially similar or related property (other than stock) within the meaning of section 1092(d)(3)(B)(i)(II).

#### Explanation of Provisions

The proposed regulations clarify the definition of the term "personal property" under section 1092(d)(1) as it applies to stock. The proposed

regulations provide that personal property includes any stock of a type that is actively traded and that is part of a straddle at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For this purpose, a position with respect to substantially similar or related property (other than stock) does not include direct ownership of stock or a short sale of stock but includes any other position with respect to substantially similar or related property. These proposed regulations thus clarify that, for example, stock and an equity swap with respect to property that is substantially similar or related to that stock can constitute a straddle for purposes of section 1092.

The proposed regulations also address the scope of section 1092(d)(3)(B)(i), which provides that stock that is offset by an option with respect to that stock or substantially identical stock or by a position with respect to substantially similar or related property (other than stock) is treated as personal property under section 1092(d)(3)(B). Although this provision does not contain an explicit active trading requirement, the legislative history of the Tax Reform Act of 1984 indicates that Congress contemplated that the stock would be treated as personal property under this test only if it is of a type that is actively traded. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 907 (1984). The regulations, therefore, include this requirement. In contrast, the regulations clarify that, for purposes of section 1092(d)(3)(B)(ii), if a corporation is formed or availed of to take positions in personal property that offset positions taken by any shareholder, stock of the corporation may be treated as personal property under section 1092(d)(3)(B) even if it is not actively traded.

The proposed regulations generally are effective for positions established on or after May 1, 1995. The IRS believes, however, that the regulations merely clarify the rule that applied once § 1.1092(d)-2 was promulgated. There is no implication that the results reached under these proposed regulations would not also be reached for positions established on or after March 17, 1995, and before May 1, 1995.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory

Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, August 30, 1995, at 10 a.m. The public hearing will be held in the IRS Auditorium, 7th Floor, 1111 Constitution Avenue, NW., Washington DC 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 31, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 9, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Robert B. Williams, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

**Par. 2.** Section 1.1092(d)-2 is revised to read as follows:

#### § 1.1092(d)-2 Personal property.

(a) *Special rules for stock.* As defined by section 1092(d)(1), *personal property* includes—

(1) Any stock if the stock is of a type that is actively traded and the stock is part of a straddle at least one of the offsetting positions of which is—

(i) An option with respect to that stock or substantially identical stock or securities; or

(ii) Under paragraphs (b) and (c) of this section, a position with respect to substantially similar or related property (other than stock); and

(2) Any stock, whether or not of a type that is actively traded, of a corporation formed or availed of to take positions in personal property as defined by section 1092(d)(1) that offset positions taken, directly or indirectly, by any shareholder.

(b) *Substantially similar or related property.* For purposes of section 1092(d)(3)(B)(i)(II) and this section, the term substantially similar or related property is defined in § 1.246-5 (other than § 1.246-5(b)(3)). The rule in § 1.246-5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(c) *Position with respect to substantially similar or related property (other than stock).* For purposes of section 1092(d)(3)(B)(i)(II) and this section, a position with respect to substantially similar or related property (other than stock) does not include direct ownership of stock or a short sale of stock but includes any other position with respect to substantially similar or related property.

(d) *Example.* The following example illustrates the application of this section.

(1) *Facts*—(i) *The stock.* A acquired 10,000 shares of actively traded X stock during 1990. On September 29, 1995, those shares had a fair market value of \$1,000,000.

(ii) *The swap.* On September 29, 1995, A entered into an "equity swap" contract with unrelated counterparty C, for a term of three years. Under the terms of that contract, on the last business day of each calendar quarter, A must pay to C an amount equal to the appreciation, if any, during the quarter on 10,000 shares of X stock. A also must pay to C an amount equal to the dividends, if any, that were paid during the quarter on 10,000 shares of X stock. On the last business day of each calendar quarter, A is to receive from C an amount equal to the depreciation, if any, during the quarter on 10,000 shares of X stock. A also is to receive from C an amount equal to the 3-month London Interbank Offered Rate (LIBOR), as determined at the close of the prior quarter, multiplied by the value of the X stock on that date.

(2) *Holdings*—(i) *The two legs as offsetting positions.* Because holding the equity swap

substantially diminishes A's risk of loss from holding the X stock, the X stock and the equity swap are offsetting positions within the meaning of section 1092(c). The remaining question is whether these are positions with respect to personal property.

(ii) *The swap leg as a position with respect to personal property.* The equity swap contract is a position with respect to personal property as defined by section 1092(d)(1). Although section 1092(d)(3)(A) generally excludes stock from the definition of personal property, this exclusion does not apply to interests in stock. Therefore, stock can be personal property when testing whether an interest in the stock, other than a direct interest in, or a short sale of, the stock, is a position with respect to personal property. Because the equity swap contract is an interest in actively traded stock, the equity swap contract is a position with respect to personal property.

(iii) *The stock leg as personal property.* As described below, ownership of the X stock is also a position with respect to personal property.

(A) *The rule of section 1092(d)(3)(B)(i)(II).* Under section 1092(d)(3)(B)(i)(II) and paragraph (a)(1)(ii) of this section, stock is not excluded from the definition of personal property if it is part of a straddle at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock).

(B) *The swap as a position with respect to substantially similar or related property (other than stock) for purposes of section 1092(d)(3)(B)(i)(II).* Under paragraph (b) of this section, the equity swap contract is a position with respect to property that is substantially similar or related to the X stock because A is entitled to payments under the equity swap contract that are attributable to the decline in the value of the X stock. See § 1.246-5(c)(7). Under section 1092(d)(3)(B)(i)(II) and paragraph (c) of this section, the equity swap contract is a position with respect to substantially similar or related property (other than stock) because it is not direct ownership of stock or a short sale of stock.

(C) *The stock as part of a straddle for purposes of the test of section 1092(d)(3)(B)(i)(II).* In determining whether the X stock is part of a straddle for purposes of the test of section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section, section 1092(d)(3)(C) treats the X stock as personal property. Because the stock is treated as personal property for this purpose, because the equity swap contract is a position with respect to personal property (see paragraph (d)(2)(ii) of this section), and because the X stock and the equity swap contract are offsetting positions (see paragraph (d)(2)(i) of this section), the straddle test in section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section is satisfied. Accordingly, under section 1092(d)(3)(B), the stock is personal property for all purposes of section 1092.

(iv) *The two legs as a straddle.* Because ownership of the X stock and the equity swap contract are offsetting positions with respect to personal property, the X stock and the equity swap contract are a straddle to A within the meaning of section 1092(c)(1).

(e) *Effective dates*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to positions established on or after May 1, 1995.

(2) *Special rules for substantially similar or related property*—(i) *In general.* Paragraph (b) of this section applies to positions established on or after March 17, 1995.

(ii) *Special rule for certain straddles.* Paragraph (b) of this section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(A) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(B) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

#### North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of statutory provisions pertaining to the North Dakota program's Small Operator Assistance Program and individual civil penalties. The amendment is intended to revise the North Dakota program to be

consistent with the corresponding Federal regulations and SMCRA.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., June 1, 1995. If requested, a public hearing on the proposed amendment will be held on May 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on May 17, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. "B" Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776  
North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, ND 58505-0165, Telephone: (701) 224-4092

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-5776.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

#### II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Amendment number XXII, Administrative Record No. ND-W-01). North Dakota submitted the proposed amendment in response to the required program amendment at 30 CFR 934.16(y) and in response to an